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**BEFORE THE SURFACE TRANSPORTATION BOARD**

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**Ex Parte No. 705**

***Competition in the Rail Industry***

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**COMMENTS OF ARKEMA, INC.**

**2000 Market Street**

**Philadelphia, PA 19103**

**April 12, 2011**

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## ***Competition in the Rail Industry***

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### **COMMENTS OF ARKEMA, INC.**

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On behalf of Arkema, Inc., I am pleased to provide these comments pursuant to the Surface Transportation Board's ("STB" or "the Board") January 11, 2011 notice seeking comments on access and competition in the rail industry. Arkema is a manufacturer of chemicals and operates 23 manufacturing and research and development facilities in 14 states, with over 2,200 employees across the United States. Arkema routinely uses railroad carriers to move both raw materials and finished products to and from its plants, and, as such, a strong, competitive rail industry is critical to our overall business operations.

#### **I. Arkema Supports the Board's Review of Competition in the Rail Industry**

We strongly support the Board's inquiry in this important area, and we believe this effort can help ensure that the rail transportation sector is open, fair and competitive. The Board's undertaking also comes at a critical time for U.S. businesses as U.S. companies face increased competition around the globe. A strong and competitive U.S. rail transportation industry is vital for American industry, and the efforts of the Board in this area can help achieve this goal.

## **II. Current State of Rail Competition and Costs for Arkema**

Rail transportation costs represent a significant component of our overall logistical and operational costs. Unfortunately, these costs continue to rise, and we, and many others in the chemical industry, have to deal with these rising costs that, ultimately, must be borne by our company and/or our customers. A recent Senate Commerce, Science and Transportation Committee report, entitled, "The Current Financial State of the Class I Freight Rail Industry," underscored this issue and noted that the railroads' "pricing power has led to significant top-line revenue growth for Class I railroads and has resulted in... swelling profit margins. Although we are not opposed to industries making a profit, we are concerned when certain pricing practices can have a significant impact on other industries and markets. At the same time, for many of our products and materials, we are often unable to pass along the increased shipping costs because competition from foreign companies has driven the individual product prices down. Thus, we are faced with having to sell our products and materials at a lower price while simultaneously having to absorb increasing shipping costs. In most cases, we have no other safe alternative to rail to ship our products, and thus our competitive options are very limited.

Since there are fewer rail options today than there were a decade ago there are less competition-based checks and balances with the current rate structure process. A review of the number of rail carriers currently serving four key rail gateways that are important to Arkema's operations shows that there are now fewer rail carriers at three of these gateway locations than there were before the rail mega-mergers of the late 1990s and early 2000s. Specifically, in the case of the Houston, TX area, which is a vital traffic generating origin for several of our facilities, we now have full service from only two

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Class I railroads and partial service from a third Class I railroad—this is in contrast to pre-merger service by six Class I railroads. Fewer rail options means less competition and this has resulted in higher shipping costs and fewer service options.

In addition, with fewer rail options we are finding that our facilities are increasingly "captive" to only one rail carrier. In fact, we have true competition, i.e., competitive service at both ends of the rail shipment, for only one percent of our shipments. Further, a full seventy one percent of our shipments are captive at both ends of the shipment, and twenty-eight percent of our shipments have competition at only one end of the shipment.

When the rates for shipments to or from one of our "captive" facilities are compared to the shipping rates to or from a facility that does have competitive shipping options, we find that the rates for our captive facilities are significantly higher than those at our non-captive facilities. For some of our shipping routes and products, we have seen rates increase as much as 150% to over 300% just in the last five years. These rates far outpace normal, inflationary costs and directly affect our operations, sales, and our own ability to invest in our manufacturing infrastructure.

### **III. Joint Comments and Key Issues**

Through this proceeding, the Board is reviewing and analyzing a number of important issues, including seeking proposals to modify or make changes in such areas as alternative through routes; terminal facilities access; reciprocal switching agreements; bottleneck rates; and access pricing. We strongly support the Board reviewing all of these issues and other related areas that impact competition, and, in general, we support the joint comments submitted by the American Chemistry Council, the Chlorine Institute,

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Consumers United for Rail Equity, National Grain and Feed Association, the National Industrial Transportation League, and the Fertilizer Institute. As these joint comments note, the Board has considerable authority and discretion to take action in these areas, and we urge the Board to take all necessary steps to strengthen and improve the competitive environment in the rail transportation area.

**A. Alternative Through Routes**

We would underscore the need to consider some competition improvements in the area of alternative through routes. In the case of alternative through routes, we believe the current system can result in shipping delays because the routing protocols provide incentives to the rail carriers to maximize transit times in order to maximize revenues. Examining ways to address this issue would help reduce travel times for shipments and should reduce shipping costs.

**B. Reciprocal Switching Agreements**

In the area of reciprocal switching agreements, we would generally support actions that would allow for increased use of such agreements. Such agreements have the potential to reduce costs and increase service options for all parties. Perhaps the Board could consider developing a pilot program in one or more selected geographic areas that would allow for increased use of reciprocal switching agreements that could be negotiated by all parties. The lessons learned from such a pilot program then could be applied to other parts of the system.

**C. Rule 11 Shipments**

As the Board considers additional issues related to competition, we also support strengthening the ability to use Rule 11 shipments. It has been our experience that

shipments using Rule 11 procedures have benefited from this process. This is particularly the case with respect to toxic by inhalation (TIH) shipments. However, it has also been our experience that the Rule 11 process has not been as available for our non-TIH shipments. In fact, in some cases, our requests for such pricing to apply on our less hazardous products has been denied. Therefore, we would support a review of Rule 11 procedures with the aim of ensuring consistency in its application across the various types of shipments. Strengthening this process would be an additional tool available to shippers, and we believe this process is worth considering as part of the Board's overall efforts regarding competition.

#### **D. Rate Case Process**

Although not specifically noted in the Board's notice, we believe it is also relevant to any review of competition in the rail industry to examine the current process for bringing a Rate Case. A key part of the current system of checks and balances in the rail competition area is the ability (or non-ability) of a shipper to bring a Rate Case before the Board for their consideration. One key factor in deciding whether or not to bring a case is cost. Therefore, we greatly appreciate the Board's recent proposal to significantly reduce the filing fee for rate cases to \$350. This action should help remove a key obstacle to bringing Rate Cases.

However, the filing fee is only one of the costs and resources required to develop and argue a Rate Case before the Board. In most cases, the costs remain prohibitively high because of the complicated process and procedures that are required, and the need to involve skilled STB counsel and economic experts. Thus, as a companion action to reducing the filing fees, we would also welcome any actions that might further simplify



and streamline the current Rate Case process so that overall costs can be reduced, and the use of Rate Cases can be more readily available as a check against egregious rail shipment pricing.

Another key component of the Rate Case process is the basis on which a case may be brought before the Board. Before a rate can be argued, the rate must be a tariff rate, and only a tariff rate. In many instances, a shipper has no recourse but to agree to a contract rate, as the tariff rate is prohibitively higher than the proposed contract rate. We would like the Board to consider allowing for the inclusion of contract rates to be argued under the Rate Case process.

We believe a simplified process and the inclusion of contract rates will help ensure that rail rates remain competitive.

#### **E. Global Competition**

Finally, we would note that maintaining the competitive balance in the rail transportation sector is extremely important in terms of how our company operates in the global marketplace. We must compete not only with other companies domestically, but also with companies in Asia, Europe and elsewhere. Unfortunately, we are finding that, in many cases, our competitors have less transportation costs than we do, despite the fact that they are shipping their materials or products from thousands of miles away. They can do this because they can ship directly to a port that may be closer to the end-user or to a port that enjoys greater competitive rail service that can result in lower rail shipping costs once the products arrive in the United States.

Additionally, many global manufacturers examine a myriad of issues when siting new facilities or expanding existing plants. Transportation costs of getting goods to

market and raw materials to plants are a critical component of any such calculus. The competitiveness of American industry is predicated upon an economical transportation and infrastructure environment. The U.S. has a huge advantage over developing nations in that its rail infrastructure network is in place and accessible to all. Allowing monopoly pricing to destroy that competitive advantage has to be avoided in a global environment for goods, services and capital.

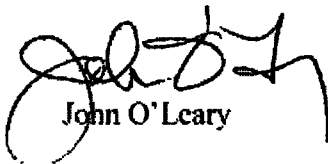
Therefore, we believe the effects of these international shipping issues and their impact on competition and shipping rates should also be examined as part of this process as they are increasingly key components of our overall competitiveness.

#### **F. Conclusion**

Again, Arkema appreciates the opportunity to provide comments to the Board regarding the notice of January 11, 2011 seeking comments on access and competition in the rail industry. Access to reasonably priced rail transportation is important to the continued competitiveness of Arkema here in the United States. We applaud the Board's efforts in seeking comments and the subsequent hearings scheduled in June.

Thank you for your consideration.

Respectfully submitted.



John O'Leary

Director, Corporate Logistics

Arkema, Inc.

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